

In Memoriam

Honorable
Thomas Fulton Crosby, Jr.
(1940 - 2004)



**IN MEMORIAM
HONORABLE THOMAS FULTON CROSBY, JR.
1940-2004**

Judge of the Superior Court of Orange County
(1981-1982)

Associate Justice of the Court of Appeal
Fourth Appellate District, Division Three
(1982-2001)

On March 12, 2004, at 4:30 p.m., the Court of Appeal, Fourth Appellate District, Division Three, assembled at the Old Orange County Courthouse, 211 West Santa Ana Boulevard, Santa Ana, California, to commemorate the life and times of Associate Justice Thomas F. Crosby, Jr., combined and edited in this report to include the oral and written remarks from the proceedings.

Among the justices, judges and court personnel present were: Presiding Justice David G. Sills, Associate Justices William F. Rylaarsdam, William W. Bedsworth, Kathleen E. O'Leary, Eileen C. Moore, Richard M. Aronson, Richard D. Fybel, and Raymond J. Ikola; retired Presiding Justice John K. Trotter, Jr.; retired Associate Justice Edward J. Wallin; Presiding Justice Arthur Gilbert and retired Presiding Justice Steven J. Stone, Second Appellate District, Division Six; retired Associate Justice Howard B. Wiener, Fourth Appellate District, Division One; Orange County Superior Court Judges Kim Garlin Dunning, John C. Gastelum, Richard M. King, Franz E. Miller, Carla M. Singer, James A. Stotler, David A. Thompson; retired Judges James J. Alfano, David H. Brickner, Daniel C. Dutcher, Richard W. Luesebrink and Christopher W. Strople; United States District Court Judges Gary L. Taylor and Alicemarie H. Stotler; Senior Judicial Attorneys William S. Amsbary II, William R. Ball, Jacki C. Brown, Joel Eichengrun, Elizabeth C. Forbath, Nancy L. Kendrick, Kelly McCourt, Janice M. Patronite, Stella A. Ruiz, John M. Seckinger, Todd M. Vukson, Robert S. Wolfe; Assistant Clerk/Administrator Joyce Nohavec; Supervising Deputy Clerk Jannes McElroy; Senior Deputy Clerk Kathleen A. Rossi; Deputy Clerk Shahira Naqshbandy; Judicial Assistants Susan Castillo and Kimberly Dykes; Court Services Officers Bonnie Blatt and Stephanie Quintero; and retired Principal Attorney Sharon T. Strople.

In addition, among Justice Crosby's many personal and professional friends attending were: John Allen, Martha Allerton, Kenneth W. Babcock, Michelle Ben-Hur, Kathy Bonner, Richard W. Bonner, John Francis Bovee, Leah Brickner, Kenneth A. Bryant, Mary Bryant, Larry Buckley, John Burton, Debra D. Carrillo, Jorje Chica, John M. Coombe, Sally Coombe, Richard A. Derevan, Steven J. Dunning, Robert M. Dykes, Zak Fairis, Larry

Fluharty, Earl Fuller, Marjorie G. Fuller, Michael I. Garey, Albert J. Graham, Jr., Carol Grisct, Dan Grisct, Donald C. Hall, Jr., Carl C. Holmes, David I. Holt, Kristy Holt, Judy J. Johnson, Julie Johnson, Denise Jones, Stanley R. Jones, Jennifer L. Keller, Kathy Kelley, Melissa Kelley, Thomas M. Kelley, John J. Kendrick, William J. Kopeny, Deborah A. Kwast, Carol E. Lavacot, Carolyn Lougee, David Lougee, William J. McCourt, Edward M. Merrilees, Jeannette York Merrilees, Damon Mircheff, Larry Moore, Andy Nelson, Richard D. Pfeiffer, Becky Riddet, James D. Riddet, Chris Sayler, Marty Sayler, Robert N. Sayler, William L. Schroeder, Penny Schroeder, Heather M. Seckinger, Richard M. Shack, Tamara Shields, Adina T. Stern, Kathryn Trotter and Bruce Voss.

Family members present included: Patty Crosby (wife), Scott Crosby and Brett Crosby (sons), Tera Bradshaw (stepdaughter), Glenn Wilhite (brother-in-law), and Alex and Judy Woodard (cousins).

JUSTICE TROTTER: For those of you I don't know, I'm Jack Trotter. I want to welcome you on behalf of Patty, Tom's wife, and his two sons, Scott and Brett.

I worked with Tom at the Court of Appeal and knew him as a lawyer before that. I first met Tom back in the early 70's when we were both in private practice. Tom's office was right down the hall from mine. Following my appointment to the bench, I had the pleasure of having Tom try a case in front of me. It involved a contested judicial election where we actually had to count the ballots one by one. And Tom was never good at math. (We had to get someone to help him do that.)

My life with Tom continued once Orange County obtained its own appellate court. I had been appointed to the Fourth Appellate District, Division Two in San Bernardino. In 1982, I returned to Orange County upon the creation of our own Division Three. I had the honor of being the presiding justice with Tom and Ed Wallin, who is here, and Sheila Sonenshine, who unfortunately could not join us this afternoon.

We started without a courtroom, without a clerk, without a docket. The first case we heard was in my kitchen. We had some wonderful years together, and the court has survived and flourished, notwithstanding the mistakes that I'm sure we made.

We're here this afternoon to pay tribute to a wonderful lawyer, judge, justice and friend. We're going to take you through some of his experiences. I hope that it's very respectful—although I have my doubts looking at some of these speakers. Following the program, there will be a reception across the street at the old Masonic Hall. Please come and share some wine and food with us. We'll relive some stories and probably have to set some of the facts straight.

Our first speaker is Bob Sayler, a full-time Ewald Professor of Law (teaching oral advocacy) at the University of Virginia Law School. Bob has been a friend of Tom for some 42 years, and first met him when they were both freshmen at Stanford and later Delta Upsilon fraternity brothers.

MR. ROBERT SAYLER: Tom was a welter of seemingly contradictory qualities.

He seemed almost too cool to move. Right out of State Beach central casting. Funny, warm, wry smile. Yet name one person who fought harder for what he believed in: the downtrodden, civil and criminal rights and liberties.

He wrote the book on unflappable. Never better exemplified than this: every day at 3:30 p.m. we would drive to the “Block ‘S’”, a horrible burger stand on El Camino (in Palo Alto) where we got our daily fix of Dr. Pepper. On driving back one day, I spied a teenaged girl with cigarette dangling from her mouth. As I was declaiming how horrible that looked (and not watching the road), it became clear to “Cros” that we would hit a car cutting in front of us. We did. No yelling, no gestures just a world class calm: “Hey Rock,” (his nickname for me because I was *not* one)—“Buick, ’ol buddy.” Unflappable, sure. Didn’t spill a drop of Dr. Pepper. But boy, did he flap about injustice.

He loved his golf and his ridiculous “Crosmobile” golf cart—two refrigerators, massive stereo blaring out every horrid rock tune ever conceived at high volume. So he loved his golf, but another contradiction, he never won.

He was very, very bright—but he didn’t want you to know it. He detested brightness for sheer brightness’ sake; the genetically and financially advantaged who did nothing to help anybody else, just relished in showing off at dinner parties.

He loved his cars but blew up one of *mine*—total engine meltdown—as he was driving it to Judge’s school in Charlottesville. They still remember him there. The faculty was speaking of having him back to help them teach judges.

Although he disliked academic snobs, he devoured the English language. No one wrote, edited, crafted better. We used to debate whether I was more addicted to spoken words or he, to written ones. He won every time. A pure disciple of Plato. But then another about-face, later he became a gifted speaker. Aristotle’s teachings started pouring out. Though I think way down he thought all this Aristotle stuff was beneath him.

And one last thing. He greatly distrusted showy flashes of affection—hated it. He profoundly loved his family and others; and we all knew it was

there, way down there, layers deep. He was a pied piper to the young, as my 14-year-old grandson, Zak, here today, can attest.

I once told Tom about Sergeant Preston's Law of the Yukon. It holds that the scenery changes only for the lead dog. Though never elevated to this state's highest court, Tom Crosby was a lead dog. Now his scenery has changed. But beware St. Peter, if you ever give anybody a raw deal up there, Tom Crosby will find out, deal with you and, scariest of all, write an opinion about it.

Crafted by his sons, Brett and Scott, and his wife, Patty, Tom's website is called "State Beach." That is because Tom never said good bye, just "see you around State Beach"—or the short version, "State Beach." Legions of us picked it up. My own children and grandkids never knew where I got it. Now they do.

So I won't say good bye: just "State Beach, Cros."

JUSTICE TROTTER: We turn now to Dick Bonner, one of Tom's closest friends and longtime law partner in the firm of Crosby, Garey and Bonner.

MR. RICHARD BONNER: How do you tell someone who didn't know Tom Crosby what he was like? You could talk about the superb scholarship, the brilliant legal mind, and that will live on, you can read his cases. It's there. You will know.

But what about the guy? What was he like? What made him tick?

Despite his professional resume, Tom remained a lifelong adolescent. All of the characteristics of a teenager stayed with Tom his entire life. Irreverent. Fun loving. Filled with fanciful ideas. Passionately idealistic.

Truthfully, if you had to think of a character in literature, who is it?

Tom Sawyer. The clever, smart-aleck with a heart of gold, who sees humor and adventure wherever he looks.

That's Tom Crosby.

His language, as Bob Sayler said, was the patois of the Long Beach Wilson longboarders. "See you at State Beach." Tom's boyhood friend Dick Luesebrink knew what "State Beach" meant, but nobody else did. That's what you heard: "It'll be a blast." "Good if it goes." You can't turn in a brief and say, "Good if it goes."

The most important aspect of this adolescent spirit was his infectious optimism. He truly brightened every situation he was in. He made everybody a little bit better.

I was in the public defender's office for about five years, then got out and was in private practice. Tom was looking for someone to write cases. Mike Garey had already gotten out and was with Tom. My name came up, and Tom asked me to go to lunch. We went to lunch and I had the specifics in mind of what it was going to entail, my career. What did Tom talk about? The Angels. Apparently, they had made some off-season trade that he thought was outrageous. He spent the entire lunch hour ranting and raving about better general managers; how he could do the job. Finally, as he only had five minutes to return to court, all he could say was, "Let's do it; Let's do it." He offered me some miniscule percentage, and I wasn't even allowed to ask "percentage of what?" He waved me off in that Crosby way, like, "Don't worry about it, we'll figure it out. It'll be a hoot."

Here I am. As I drove away, I could only think, "One of the most brilliant legal minds in California—but the most detailed, specific and accurate way he could describe the business venture was to say, 'It'll be a hoot?' "

Bailing on common sense and relying on instinct, I joined Tom and Mike.

Our law firm was truly an experience. It was not a job—it was an adventure. There were long hours. I left early when I left at 8:00 p.m. Michael and Tom were still soaring at that point.

Tom had a large office. He cut out a golf hole in the middle of the floor. You could lose a lot of money in that golf hole. The first hole started down the mail hallway. It was at least 50-yards long. You had to go into another room, bounce off a wall, under a desk, and you could gamble away a lot of money.

It wasn't just the golf hole. It wasn't just rolling up paper and throwing it in the trash can and betting on that. It wasn't just pitching pennies against the wall.

Once Michael bet Tom he couldn't do a hundred deep knee bends. Tom wasn't in shape. That's a lot, a hundred, he was in such pain and paralysis and agony and he got into the 90's before he fell over and collapsed. But he bet money, and he could not give up.

We came back to the office around 4:30 or so everyday, and Crosby would hold court. I'm sure he did that over at the Court of Appeal. He would sit

back and talk about the dragons he'd slain that day. What he was going to do to that judge tomorrow. How he's going to show those people. Michael would talk. I would talk. Camaraderie developed. You could be sure if you did anything wrong in a case, if you had a difficult point, the other two would be there immediately to inflict tremendous ridicule. There were plenty of times when talking you would feel so stupid for getting in that position, it forced everyone to be a little better.

A few people here have been around long enough to see Crosby as a lawyer. He was supremely confident. That's the persona he projected. He sat with a slouch. When a judge asked him to do things he reacted very slowly. He acted as if he was completely bored by the District Attorney. He largely ignored the judge. He just waited to speak the wisdom he had ready for the jury.

Tom was able to maintain this persona even when he was blind-sided by a fact he didn't know about. It didn't happen too often, but a few times facts would come up that he didn't know about. By the time he walked back into the courtroom he was that supremely confident, nonchalant person that he had been before. Tom could still do this until the very end.

Then there was Crosby's softball team: the Tortfeasors. A lot of you here were Tortfeasors. This was not a small point in Tom's life. These were some of his very best friends. After every game there was pizza and a party. Crosby would sit back and tell stories. He loved it. And Scotty, and Brett and the other kids would come to those things. It was the glue that held everyone together.

While I didn't spend a lot of time at the Court of Appeal, I did see the interaction with Tom and his chambers. It was the same as at the law firm, and with the Tortfeasors. The same Tom Crosby. The same infectious optimism that made everybody a little bit better. They talk about Larry Bird, the basketball player, being the one who makes everyone on his team a little bit better. Tom brought that quality to the law firm, he brought it to the Tortfeasors, he brought it to the Court of Appeal. It's a rare quality.

In late November, Patty still worked for me part-time and it was their 20th wedding anniversary. I'm doing something in the office and she walks by and she's kind of pouting. I asked, "What's going on?" She said, "I left the house today. It's our 20th wedding anniversary. Tom didn't say a word."

I realized when people have been together as long as they have they develop back channels of communication. I'm the back channel.

I get on the phone. “Crosby?” “Yes.” “What day is it?” “Tuesday.” “What’s the date?” He tells me the date. “Does that have any significance to you?” “Should it?” “Get up, go over to your mantle, and look at the picture. Underneath the picture there’s an engraved date. Go look at it.”

I hear him put the phone down. I hear him walking up there. I hear this “Oh!” and then this string of expletives.

Crosby comes back and says, “See you later.”

Not too much later, Patty leaves for home. She walks in the door in the middle of the afternoon. There’s this enormous bouquet of flowers. Crosby is sitting in the den supremely confident and nonchalant, wearing his tuxedo.

That’s pure Crosby.

If someone asked me what it was like being around Tom for 25 years, to be as specific and accurate and detailed as I could be, I’d have to say, “It was a hoot.”

JUSTICE TROTTER: Our next speaker is Associate Justice Bill Bedsworth, Tom’s teammate in the D.A.’s office, opponent in private practice and colleague on the Court of Appeal.

JUSTICE BEDSWORTH: The smartest, coolest madman on the whole West Coast is dead.

And if all the integrity in the state could be had last month for a hundred dollars, you could get it today for \$87.50. A large part of our collective conscience has moved on, and he will not easily be replaced.

On a personal level, I have lost as good a friend as I ever hope to have. Brilliant, fiercely loyal, and absolutely fearless, he was someone I knew I could always count on. But mostly I counted on him to remind me that life is for laughing. He laughed easily and completely, joyously and often. His opinions were memorable, but his laughter was unforgettable.

I loved him. And although we played Gladstone and Disraeli for three decades, I miss him terribly.

I met Tom Crosby thirty-two years ago. It was October of 1971, and I had landed a job as a law clerk in the Orange County District Attorney’s Office while awaiting my bar results. Having spent two weeks working for Oretta Sears (later our county’s first elected woman judge) and two weeks working

for Alicemarie Stotler (now of the federal district bench), I was shunted off to the Fraud Unit, which at that time consisted of a future judge, a future bank president and Cros.

He was electric even then. In an office firmament which included an all-star team of nova-magnitude line lawyers, you had to shine pretty brightly to stand out. Tom did.

He was scary smart—one of those people for whom life is a chess game in which they easily see five moves ahead. He was adept at not just understanding the law, but understanding how its application would affect the real world. I didn't realize then what a rare talent that is.

And his enthusiasm for prosecution was positively incendiary. He made me excited to be working in a prosecutor's office and excited to be working on fraud cases. He made the bait and switch of a television set sound like ethnic cleansing. He made the case sound like it belonged at Nuremberg, and he made me want desperately to find legal precedents that would put anyone who would commit such heinous crimes in jail.

At the time, I thought he hated criminals. I later learned he hated untruth—no matter what its source, no matter what its outcome, no matter whom it benefited. The truth was his gospel; anything less was anathema.

Years later, when he joined the criminal defense bar, that abhorrence of falsehood stood him in good stead. Tom had the lowest righteous indignation threshold of anyone I've ever met. He could get genuinely irate about things most of us shrugged off.

I thought it was a quirk at first. But over time, I realized it ran much deeper than that. Tom became indignant because Tom saw what many of us blink at. Tom saw that any violation of the rules—whether by the accused, the police, the prosecution, or the court—is basically a lie. And a lie not only diminishes all of us . . . but also desensitizes us to the next lie, and the one after that, and the one after that.

I am embarrassed to admit that it was a long time before I was able to realize he wasn't just the biggest pain in the ass in the entire defense bar, he was the most effective and relentless pain in the ass in the entire defense bar. And, as I began to see how effective and relentless he was, I came to understand that he was right about little lies being the precursors of big ones. And I began to agree with him that while we might *understand* a flawed justice system, we should never *tolerate* it.

And—paradoxically—I began to love my job more. Because Cros made me see how important every case was. Because I realized I could fight for justice just as hard from my side of the table as he could from his. He made me see that the battlefield wasn't the counsel table. It wasn't a file or a statistic or a point of law . . . it was people's lives. And watching him fight for people's lives inspired me to fight just as hard.

He was a great defense attorney. In a county where you could find an Olivier-caliber performer plying his trade in the criminal courts almost any day, Tom Crosby was always a marquee name.

But he will best be remembered as a justice of the Court of Appeal. It was a job he loved and a job that loved him.

I've never known a smarter lawyer than Cros. And his legacy would have been secured by the mere dint of bringing that spectacular intellectual firepower to bear on the legal problems he faced in his two decades on the court. Nobody as smart as Tom Crosby could fail to leave his mark on the state's law.

What a wonderful mind. Only 16 years of Republican governors stood between him and the California Supreme Court. And, while he loved to joke that the Supreme Court played a box-and-one defense on him—that the junior justice of the court was assigned to do nothing but scan Crosby's cases for the treacherous error doubtless lurking in all of them—he had the admiration . . . and apprehension . . . of every member of every appellate court in the state. No one rested easy who found himself on the other side of an issue from that mind.

But Tom never decided a case with his intellect alone. He was blessed with a blast furnace of a heart. And every opinion formed by applying his intellect to facts and law was tested for impurities in that passionate kiln. His mind made him good; his heart made him great.

It is often said about appellate justices—as a compliment—that every case was a big case to them, that they never saw a case they regarded as unimportant. I've never understood that as a compliment. It suggests the judge didn't know any better, that only a lack of discernment caused him or her to work hard on every case.

I guarantee you Tom Crosby knew the difference between big, important cases and little, unimportant ones. The measure of his greatness was that he *did* know that and *still* devoted the same unrelenting effort to all of them. Whether it was a hundred million dollar judgment or a twelve thousand dollar

attorney fees award or a life sentence or a topless bar ordinance, Tom Crosby was on it like ugly on a bulldog.

Because somewhere in every case—civil or criminal, big or small—there was untruth. Someone in every case—intentionally or inadvertently—was flying the banner of falsehood. And that would always pull Tom Crosby into the fray, regardless of whether it looked big or small to the rest of us.

But the ones he loved most—the ones that lit him up and caused people to turn in the hallway to see what was causing that bright light at the other end of the building—were the ones where he felt the individual was being abused by the state.

Tom had spent his entire life doing battle with adversaries who proved unworthy. So when he found himself on the side of the individual, with all the power of the state arrayed against him, when he found himself convinced that justice favored a small-time crook against all the people of the State of California, or a band of homeless vagrants being turned out by the municipal machinery of the City of Santa Ana, *then* he had an adversary worthy of his considerable skills. And he was always at his best when he could take out that formidable pen and do battle with dragons.

The field that lies behind him now is littered with dragons. He was an awesome force in the Court of Appeal. Those of us who worked with him there know just how different the law is today from what it would have been without him. And all of us who knew him know the world is a better, fairer, more just place for all of us because he passed through it, even if he passed through it too quickly.

When I was a boy, my daily curfew was 5:30. I had to be home by then for dinner. In winter, the sun was down by 5:00 p.m. but there was enough light to let us play ball for another half-hour, if we really worked at it. And we did. I was never home a minute early; I hated to see those days end, and I squeezed every drop of light out of every one of them.

Well, now the sun's gone down again. As bright and warm a day as we shall ever see has come to an end—long before we were ready to let go of it. But daylight is never extinguished; it just moves to another part of the heavens. While Cros can no longer be seen in our firmament, it will be a long time before his brilliance fades from the sky. And it's our task now to squeeze every drop of light out of the incandescence that was this great man.

I will not see Halley's Comet again. But I saw Tom Crosby. That's good enough for me.

JUSTICE TROTTER: Tom Crosby frequently quoted from his good friend, Art Gilbert, Presiding Justice of the Court of Appeal in Ventura, who now returns the favor:

JUSTICE GILBERT: I was walking down the street talking to Justice Tom Crosby a few days ago. He was his usual self, railing about a case with which he disagreed. "The issue has the circumference of a medicine ball and they missed it."

"You're getting excited, Tom," I said.

"Of course I am. I love talking, thinking, shaping and writing about the law. That is something to get excited about."

"Hey Tom," I said, "People will think I'm nuts. It looks like I'm talking to myself."

"I like that," said Tom. "But not to worry. People probably think you are talking on a cell phone."

"But I'm not holding a cell phone."

"I love it. If people don't think you are a little nuts, or highly unusual, then you are probably not doing your job."

Here I am walking down the street and talking to Tom Crosby. Newspapers say he passed away in January. Tom would be the first to say not to believe everything you read in the papers, or elsewhere, for that matter. If you asked him if that included his own opinions, he would give you his signature Crosby smile—almost sardonic, but not quite, because of the twinkle in his eyes.

"There are exceptions for the exceptional," he would say.

As to the articles about Tom's passing, I don't believe entirely what I have read, not because Tom says so, but because here I am talking to him. I hear his voice, his inflections, his wry humor, his contempt for artifice and empty slogans, his insistence on rigorous analysis and thought.

People like Tom don't merely "pass away." Tom is still there, in your face, challenging you to think and to be honest. His engaging and lovely wife Patty will bear me out on this. I had the good fortune to spend some stimulating and joyful hours with Tom and Patty.

Tom and I were appointed to the California Court of Appeal at the same time, in December 1982, he to the Fourth District in Orange County and me to the Second District, Division Six, the new Division in Ventura. We first met at a conference for new appellate justices in Berkeley shortly after our appointments.

He often looked like a straight-laced Ivy League type, what with his bow ties, wire-rimmed glasses, sleeveless cardigan vest and reserved bearing. Notice his photo in the January 28, 2004 Los Angeles Daily Journal. His folded arms might lead you to believe that he is playing it close to the vest, or that his mind is made up and there will be no changing it. Wrong! Tom is indisputable proof that looks are deceiving, or that perceptions can be faulty.

Tom knew everything about any case that came before him, as well as everyone else's cases, including my own. He lectured extensively on a case I wrote on writ practice (with much assistance from our writs attorney, Will Gorenfeld), *Omaha Indemnity v. Superior Court of Santa Barbara Co.* (1989) 209 Cal.App.3d 1266. Tom supplied a stunning analysis, uncovering subtleties that enhanced my insight into the very case I wrote.

In remarking about the infrequency with which writ petitions are granted, Crosby, with his characteristic wit, reminded judges and the bar that there is a reason our court is not called the Court of Writs. I lavished Tom with praise for his incisive comments. He blushed and changed the subject. He simply could not accept compliments, but he was liberal in his praise of others, with one important proviso—you had to deserve it.

He was persuasive even when you disagreed with him. On a visit to Rome he e-mailed his staff that he felt he had convinced the pope to accept *Roe v. Wade*. I could go on and tell you about his incandescent brilliance, his ironic humor, his passion for the law and his healthy obsession with justice. But Tom and his staff speak with far more eloquence than I can muster.

On his retirement, Tom's staff, Bill Amsbary, John Gastelum, John Seckinger and Bob Wolfe put together numerous quotes from Tom's opinions. They titled it, appropriately, "The Portable Crosby." Tom did not think he was doing his job if he did not get under one's skin now and then. Nevertheless, it could also have been titled "The Quotable Crosby."

In the preface, they write: "With Tom Crosby's retirement, it has been said (in the L.A. Times, no less) that our court may be losing its 'most gifted writer.' Words never failed Justice Crosby, but he has been equally good to them in return. More interested in conciseness and clarity than cleverness, he was unmotivated by politics, hidden agendas or ideology. He ably filled the

judiciary's side of the bargain in Justice Gilbert's 'match in heaven' between good writers and readers of judicial opinions.

"While Tom Crosby may not have been infallible, he certainly was unflappable. Whatever he dished out, he took in return. Whether his carefully crafted, deeply felt opinions were decertified, reversed or simply ignored—whether he was the lone dissenter or the target of a blistering riposte from a justice, brief writer or talk radio host—his typical reaction was the muttered: 'It'll make you crazy if you let it.' And he never did.

"It has been our luck to work with a clear-headed, plain-speaking *el jefe*. Over the years, we have seen Justice Crosby edit—indeed, shred, our writing. It is now our supreme pleasure, finally, to edit his."

Tom had much to say on every topic and issue known to humankind. His words reflect his character, wit, imagination, wisdom, compassion and intellect. Here are some gems from "The Portable Crosby." Some cases have not been published, but Tom's words live on:

"While a picture might be worth a thousand words, the jury heard at least that many." (*Akers v. Miller* (1998) 68 Cal.App.4th 1143, 1147.) "Vincent Van Gogh wrote to his brother in May 1889 that his madness should be viewed 'as a disease like any other.' More than a century later, health care insurers still do not share this outlook." (*Warner v. California Physicians Service* (1998) G016812 [nonpub. opn.].) "Considering [the father's] own claims of poverty, we are puzzled why he has chosen to pay his attorneys (at \$250 per hour) to pursue this appeal rather than to pay a much lesser sum to his own children. One hour of his attorney's time would cover ten months of additional support for each child." (*In re Marriage of Estrada* (2001) G027301 [nonpub. opn.].)

"After school and during vacation periods, the streets, beaches, homes and malls are crowded with unattended children. Some of them are lonely; some get hurt or killed; and many are victimized or victimize others. This is all a shame, one of the great failings of our otherwise fabulously wealthy society." (*In re Kamiya* (1998) G022140 [nonpub. opn.].) "[Appellant] did not receive ineffective assistance of counsel; sadly, her son had an ineffective mother." (*In re Cody W.* (1994) 31 Cal.App.4th 221, 233.) "Whatever hat the contractor may have worn, it simply did not cover an insured head." (*Campobasso v. State Farm Fire & Casualty Co.* (1998) G016911 [nonpub. opn.].)

"[Defendant] was 'guilty' of only one thing—constructive possession of an ice-cold 12-pack. A sin, perhaps, in some quarters, but a far cry from the FBI's 'most wanted list.'" (*Huynh v. Superior Court* (2000) G025791

[nonpub. opn.].) “[A]n auto thief, like a second-story man apprehended in the victimized premises, has no standing to assert a reasonable expectation of privacy in the stolen car.” (*People v. Melnyk* (1992) 4 Cal.App.4th 1532, 1533.) “Counsel in the defense of criminal cases is not held to a standard of miraculous prescience.” (*People v. Fatone* (1985) 165 Cal.App.3d 1164, 1174.)

“Our rivers may be murky, the air opaque, and the Pacific clouded with sewage and sludge; but Public Resources Code Section 21166 is as clear as they once were.” (*Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1555 (dis. opn. of Crosby, J.) “[Plaintiff’s] unseemly haste . . . reminds us of the farmer who pulled up his crops each night to see how they were growing.” (*Dynamic Concepts, Inc. v. Truck Ins. Exchange* (1998) 61 Cal.App.4th 999, 1001.)

“[T]he performance was in bad taste, but ‘there is no law against bad taste,’ which should ‘be reassuring to much of the modern entertainment industry.’ ” (*People v. Janini* (1999) 89 Cal.Rptr.2d 244, 251, fn. 9, review den. and opn. ordered nonpub. Jan. 25, 2000.) “The appearance of Halley’s Comet is probably a more common occurrence than a refusal to dismiss a misdemeanor on the prosecution’s motion.” (*Mathis v. Superior Court* (1984) 203 Cal.Rptr. 65, 69, fn. 2, hearing den. and opn. ordered nonpub. May 30, 1984.)

“[H]omelessness is a national phenomenon, and it is not the first time it has appeared as an important social problem in this century. The attack must be on the cause, not the victims; for they in the main are no more content with their circumstances than anyone else is.” (*Tobe v. City of Santa Ana* (1994) 27 Cal.Rptr.2d 386, 395, fn. 15, review granted May 12, 1994 and judgment reversed by *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069.) “A cautionary note — we spend too much time trying to make sense out of arbitration agreements precisely because litigants spend too little time in drafting them.” (*National Union Fire Ins. Co. v. Nationwide Ins. Co.* (1999) 69 Cal.App.4th 709, 716.)

The foregoing are mere samples of Justice Crosby’s legacy. His passion for grammar equaled his passion for the proper application of legal principles. He railed against the “indefensible comma,” and loathed the word “that.” And so, Tom, we still will carry on our conversations and I can take comfort in knowing that . . . whoops, I mean, in knowing you will always be with us.

Good-bye, dear friend.

JUSTICE TROTTER: Our next presentations are from two of Justice Crosby’s family members, his wife, Patty, and his elder son, Scott.

MS. PATTY CROSBY: What a life it turned out to be! Words cannot express my appreciation to all our many friends for what you have done and what you have said, although why I should be surprised is beyond me. I hope that I have the opportunity to speak to all of you at the reception later this afternoon, and in the days and weeks and years to come.

This list is not exhaustive, but particular thanks to those of you who have traveled long distances to be here . . . Bob Sayler and his family for traveling from Washington, D.C., Carolyn and David Lougee, our dear friends from Stanford . . . Art Gilbert, who as he has just indicated, keeps talking with Tom to this very day, and certainly has kept me going with his words of support. Tom and Kathy Kelley, our longtime friends, for the comfort and comfort food they have shared these past weeks.

Thanks too for those whose generosity and time have made today's program possible. Kathy O'Leary and Carol Lavacot for putting it all together. Jack Trotter, Ed Wallin, Sheila Sonenshine and Jennifer Keller for graciously agreeing to host this afternoon's reception. Jennifer, too, for weaving together the story of Tom's life at the memorial ceremony at our house. My heartfelt gratitude to our speakers today, and to those of you who have spoken so movingly to me about Tom in weeks past. Your stories trigger many memories.

There is not enough time to express my feelings about the people who have been a part of our lives, and who have stepped forward to offer hands and hearts. I am afraid to mention your names because I worry that I will leave someone out. But you know who you are. And so do I.

I try my best to think of all the good times Tom and I have had, and the good people we have encountered. There truly is enough to last more than one lifetime. Tom was one of a kind, and the absolute love and light of my life.

My thanks for being with us this afternoon.

MR. SCOTT CROSBY: Dad was born June 4, 1940 in Long Beach, California. He was one of two sons, born bracketing WWII on nearly the same day, five years apart. His parents were a hard, backroom-deal businessman of old Long Beach and an elegant, understated firebrand of fine-

porcelain Norwegian beauty. An old baby picture I have from August 14, 1940, black and white with fade-to-white edges, clearly shows the impishness and independence that would be the result.

An assiduous student even without his father's relentless pressure, Dad got mostly A's, made the varsity basketball team at the not-small Wilson High, and got into Stanford on academics. There he was president of the DU fraternity, a tournament bridge player, and a deft hurler of bowling balls far heavier than made today. Next was law school at UC Berkeley's Boalt Hall. While there he went on a blind date with Berkeley undergrad Sharon Scott, who would, on Super Bowl Sunday, 1970 (Vikings vs. Chiefs, 23-7 Chiefs) become my mother.

In 1967 Dad went to Peru and spent two years helping people in Arequipa and becoming proficient in Spanish, haggling, and Third World driving. All would serve him well later in life.

Dad then resumed his nascent legal career and quickly built a criminal defense practice that enjoyed nearly incessant demand due to its unusually high success rate. Along the way second and final son #2 (Brett) was born. Though only getting half the Super-8 air time, Brett made up for it with twice the personality. By 1981, lawyering stress and thinning hair made him receptive to the more distinguished position of judge, and he accepted the appointment to the superior court. Two years later he was a justice in the new Orange County Court of Appeal, and remarried my stepmother Patty.

Over the next 18 years, Dad was a relentless champion of the disenfranchised and lobbyist-less, and the scourge of overreaching law enforcement and anyone who would tamper with his beloved Fourth Amendment. Dad proudly noted on many occasions that he had the highest rate of overturns and depublishings of the state's appellate judges by the conservative California Supreme Court. For all his thousands of pages of opinions, those that were allowed to stand as law constitute a few slim but potent volumes. Dad was never one to sway much from political winds.

After falling ill a few weeks ago and not getting better through the usual method (obstinacy), Dad was checked into the hospital. He submitted to a battery of tests, which, failing to find any real problem, prompted doctors to strongly urge an extended stay. He said he'd rather die, packed his bag, and went home. About a week later, he took a break from his reading and took his last nap.

Never afraid to dissent on anything, to the end. We love you, Dad.

JUSTICE TROTTER: We now turn to Bill Amsbary, John Seckinger and Bob Wolfe, three judicial attorneys who worked in Justice Crosby's chambers, to provide us with their inside perspectives on "life with Crosby."

MR. WILLIAM AMSBARY: Only a handful of attorneys were lucky enough to toil in the chambers of Thomas Fulton Crosby, Jr., during his 20-year tenure. "TFC," we called him, or "*El Jefe*" or simply "*Jef*."

Kim Dunning, who he described as the "dynamo" of the chambers, added her energy and talent during most of the Crosby era. John Gastelum, like Kim, now a superior court judge, spent nearly 15 years with TFC, much of it cleaning out his desk following egregious typos. Sue Castillo and I joined in the late 1980's; Greg Schultz in the mid-1990's; Bob Wolfe in 1996; Cara Mastrian in 1998; and John Seckinger in 2000. When Greg became disabled with Guillain-Barré syndrome, TFC extended the chambers' boundaries to Claremont so Greg could work from home.

Life in chambers was rarely dull. Most days, we lunched together, driving in one of TFC's nicknamed vehicles ("Buck," "Old Yeller," the "Desert Cruiser") to one of his nicknamed restaurants ("Grease for Peace," etc.) TFC was a creature of habit. We'd eat at the same places (never a chain) until something would trigger a blacklisting. (Considering the replacements, we never were sure why.) When one of us was car shopping, he produced at lunch an ad for a 1968 Rolls Royce, complete with a right-side steering wheel, and was hurt when his advice was not taken seriously.

Nor did we follow his stock tips. "Now's the time to buy Lindsay Engineering," he would say. "Saudi Arabia desperately needs new irrigation pipes and is willing to pay big bucks for them."

After lunch came TFC's favorite version of "Constitutional" law: a peripatetic walk through the French Park neighborhood around the court, discussing recent and historical insults to that great document. Once we stumbled upon a freshly-secured murder scene, complete with the body sprawled on the front porch; another time—just after bullet-proof glass had been installed at the court—he mischievously threw a handful of pebbles at the principal attorney's window.

Not one to self-deprecate, he boasted knowing most of the words in the dictionary (*fyi: the Oxford English Dictionary contains, as of last count, full entries for 171,476 words in current use*)—and there were some days we did not doubt it. After retirement, he bragged in an e-mail about his first "hole-in-one***"—but never explained the asterisks.

MR. JOHN SECKINGER: TFC held forth with his daily harangue on current events. He argued in favor of presidential impeachment (President

Clinton or Bush Lite—he played no favorites) or gave ready solutions to intractable problems: a football stadium at El Toro; New Jerseyite Bill Bradley for California governor instead of Gray Davis—after all, wasn’t he teaching at Stanford? The next moment, he would paint a gruesome picture of Mad Cow Disease, which, he assured, would become pandemic through deer. This, or the latest “outrage” from (you name it)—the White House, Congress, Sacramento, Wall Street, Main Street, the pulpit, the Supreme Court or our miserably incompetent pens—would trigger his imminent move to New Zealand. But he’d irascibly note how “damn far away” that country was, and we knew he was only off to Palm Desert for the weekend.

TFC took pride in his Norwegian heritage (on his mother’s side) through his stoicism, work ethic, fondness for the ABBA musical “Mamma Mia!” and utter unwillingness to show any emotion. He officiated at Cara Mastrian’s wedding in Newport Beach and attended my wedding in the Midwest; if he cried at either, he said it was “just allergies.”

His work is a matter of public record. TFC had plenty of opinions, both legal and personal, but he knew to distinguish between the two. He hid no agendas, and separated the substantive from the legalistic. He did not endlessly agonize over decisions once made. Justices and judicial attorneys sought him out for clarity.

Perhaps less known, TFC did much of the heavy lifting himself. His last criminal opinion (*People v. Maniscalco* (2001) G016442 [nonpub. opn.]) all 84 pages of it, was pure Crosby. He read tens of thousands of pages of clerk and reporter’s transcripts. He composed and typed every word above his signature. He never complained about his work—only about ours.

MR. ROBERT WOLFE: TFC was unable to give anyone a compliment to his/her face. He delighted in a jab, a sardonic remark, or a reminder about how we all worked at his sufferance, and caused him much suffering.

But he never hesitated to give people compliments outside their hearing. We all knew of the Kim Dunning standard of excellence. He constantly reminded us how much he missed Kim, particularly since all of us combined were pale imitations of her and the chamber’s glory days.

We knew, too, how proud he was of “the boys”—Brett and Scott—and their business acumen. TFC lit up when telling us how well they were doing, and their bright futures. Like Bill Gates, his sons would make him a millionaire. He looked forward to grandfathering “Little Tommys” and delighted in meddling in the selection of his future daughters-in-law.

Then there was long-suffering Sue Castillo, TFC's judicial assistant. *Jef* would do anything for her. He told us so. Indeed, he told everyone about how great Sue was. Everyone, except, of course, Sue, who would just roll her eyes at his latest riposte.

Above all, there was Patty. TFC's life partner. His foil. His sounding board. He marveled at how lucky he was to find her, while we cringed at the utterly inappropriate birthday or anniversary card that he was taking home. "Patty will love this," he would say. We weren't so sure. Could she really see behind the bluster?

TFC's death was a shock. After all, as he constantly reminded us, Mad Cow Disease had an incubation period of 20 years. He retired as early as he could, knowing full well "the boys" would make him rich, but he did not make it to his third anniversary. He had left with a promise to write about some of the odd characters who captured his interest during his time in the law.

Sadly, we'll never get to read those accounts. But, in their stead, we do our best to tell the tale of the storyteller. Thomas Fulton Crosby, *a rare first edition*, the larger-than-life boss who surely would ridicule both the substance and the grammar of these feeble efforts to capture a spirit that never can be leashed.

JUSTICE TROTTER: Thank you all for this wonderful and moving tribute.

I was amused when Dick Bonner spoke of Tom as Tom Sawyer. Fifty years after Mark Twain died, his daughter reluctantly allowed publication of a book called *Letters from the Earth*. Publication had been held up because it was thought to be too sharp, too sarcastic, too critical of the human experiment. A fallen angel comes down to earth to observe what a mess we humans have made of the world. The angel writes back to his colleague up in the Celestial Area. I envision Tom up there as well—along with Mark Twain. I can see them looking at each other, saying "didn't expect to see you here." Tom probably is somewhere in the Celestial book stacks, with a table, scattered with books, hard at work at his computer. He grumbles, Does the harp music have to play all day? Do the statutes really require that we all wear white?

Tom—you left a legacy, a wonderful legacy, a written legacy of well-reasoned, marvelously written opinions. More than that, you left a wonderful example. An example that's been referred to and talked about. An example that's a template of a lawyer, and a judge, and a justice who had equal part of courage, ethics, and dedication.

Wherever you are, it will be a better place because of you. This certainly is a better place because of you. We miss you, Tom, and we honor you. You will not be forgotten.

